

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

IN RE: § § CASE NO. 15-20032
TEXAS ENTERPRISES, LLC § §
D/B/A BLUEBONNET ELITE § §
ASSISTED LIVING § §
DEBTOR, § § CHAPTER 11
§ §

UNION BANK'S MOTION TO APPROVE NEW LOAN DOCUMENTS
REQUIRED UNDER THE FIRST AMENDED PLAN OF REORGANIZATION
OF TEXAS ENTERPRISES, LLC AND FOR ENFORCEMENT
[Docket #'s 109 & 123]

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, MUFG UNION BANK, N.A., ("Union Bank"), as Creditor and Party-In-Interest in this Chapter 11 proceeding, by and through its counsel, Anderson Vela, LLP, and hereby files this motion pursuant to Section 105(a) of the United States Bankruptcy Code and 11 U.S.C. §§ 101 *et. seq.* (the "Bankruptcy Code") to approve new loan documents and to Enforce the Order Confirming First Amended Plan of

MOTION TO APPROVE NEW LOAN DOCUMENTS AND TO COMPEL

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Reorganization of Texas Enterprises, LLC (the "Motion"). In support of this Motion, Union Bank respectfully represents as follows:

I. RETENTION OF JURISDICTION

1. 1. Although this Court's continuing jurisdiction is limited, this Court retains jurisdiction under Article 19 of the First Amended Plan of Reorganization of Texas Enterprises, LLC to enforce and interpret the terms and conditions of the Plan. This aspect of the Court's jurisdiction is "core," and ancillary to its power to confirm plans. 28 U.S.C. §157(b)(2)(L).

II. BACKGROUND

2.1. On March 19, 2016, this Court entered an Order Confirming First Amended Plan of Reorganization of Texas Enterprises, LLC (the "Plan"). Under Article 7 of the Plan, the Texas Enterprises, LLC ("Debtor") and Union Bank, as a secured creditor, were to enter into new loan documentation incorporating the terms of the Treatment of Secured Claims of Union Bank (Class 2) to include (1) a renewal, extension, and modification agreement of the underlying related loan documentation evidencing the secured claim held by Union Bank and (2) a Security Agreement and financing statement ("New Loan Documents"). In addition Jan Litwin shall, if required by Union Bank, sign a guaranty of said renewal, extension and modifications agreement. The Plan further provides that if a dispute arises between the parties over the form or substance of the New Loan Documents, then either party may file a motion requesting that the Court approve or modify the form or that standard State Bar of Texas forms be used for such purpose with appropriate modifications to reflect the terms and conditions

set out in the Plan. Counsel for Union Bank provided Debtor's counsel with a Modification Agreement (Renewal & Extension of Lien, Security Agreement-Financing Statement) in the form attached as Exhibit A and a Reaffirmation of Guaranty agreement in the form of Exhibit B.

Debtor has refused to sign the Modification Agreement without the following clause:

RENEWAL, EXTENSION, MODIFICATION – SIDE AGREEMENT

Texas Enterprises, LLC, (the "Debtor"), MUFG Union Bank, N.A. ("Bank"), and W. Jan Litwin ("Litwin") hereby agree as follows with respect to that certain Modification Agreement, Renewal and Extension of Lien Security Agreement – Financing Statement, dated effective April 1, 2016, by and between Debtor and Bank in the principal amount of One Million Fifty Thousand and 0/100 Dollars (\$1,050,000) and any loan documents related thereto:

1. The Parties hereto agree, understand, and affirm that notwithstanding anything to the contrary in (1) that certain Modification Agreement, Renewal and Extension of Lien Security Agreement – Financing Statement, dated effective April 1, 2016, by and between Debtor and Bank described above; (2) that certain Reaffirmation of Guaranty by and between Debtor and Litwin; (3) that certain Debtor's Plan of Reorganization as confirmed by the United States Bankruptcy Court for the Eastern District of Texas in Case No. 15-20032, styled *In re Texas Enterprises, LLC*; and (4) any document related or incident thereto (altogether the "Documents"), action taken against Bank by a person or entity not a party to this side agreement which relates to the Documents shall not be construed or treated as a violation of or default under the Documents by any party to this side agreement.

Also, Jan Litwin has refused to sign the reaffirmation agreement without the following clause:

§ This Reaffirmation of Guaranty is given under the understanding that all guarantees of the loans made the basis of the Modification Agreement, also signed on this date, shall remain in full force and effect and in addition to the Reaffirmation of Guaranty signed on this date.

Union Bank does not agree to the inclusion of the above clauses into the New Loan Documents.

III.
RELIEF
REQUESTED

3.1. As set forth above, the Parties have come to an impasse. Both of the above clauses requested by Debtor are not found in the Standard State Bar of Texas forms. Union Bank has not agreed to the inclusion of these additional clauses into the New Loan Documents. Accordingly, Union Bank requests that the Court approve (1) the Modification Agreement in the form as set forth in Exhibit A and (2) the Reaffirmation of Guaranty agreement in the form as set forth in Exhibit B and that the Court further compel execution of same.

WHEREFORE, Union Bank respectfully requests that the Motion be Granted and that this Honorable Court grant such other and further relief as may be just and equitable.

Respectfully submitted,

ANDERSON VELA, L.L.C.

/S/ RICHARD ANDERSON

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct of the above said Motion was served on April 18, 2017. Said Motion was filed electronically. Service was accomplished by the method and to the following as indicated.

BY ELECTRONIC NOTICE OR REGULAR FIRST CLASS MAIL, POSTAGE PREPAID:

Debtor

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/s/ Richard E. Anderson
RICHARD E. ANDERSON